

**NOT INTENDED FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
RUTH EVELYN CONKLE,	:	04-66229-WHD
	:	
Debtor.	:	
_____	:	
	:	
NEIL GORDON, as former Chapter 7	:	
Trustee for the Estate of Ruth	:	
Evelyn Conkle,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 04-6276
v.	:	
	:	
RUTH EVELYN CONKLE	:	
PENELOPE E. DEMARCO,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Judgment on the Pleadings, filed in the above-captioned adversary proceeding by Neil Gordon (hereinafter the "Trustee"). The Motion arises in connection with a complaint filed by the Trustee objecting to the Debtor's discharge and seeking to avoid a transfer of real property. This matter constitutes a core proceeding within the subject matter jurisdiction of the Court. *See* 28 U.S.C. § 157(b)(2)(H) & (J).

On April 14, 2004, the Debtor filed a voluntary petition under Chapter 7 of the

Bankruptcy Code. Neil Gordon (hereinafter the “Trustee”) was appointed as the Chapter 7 Trustee of the Debtor’s bankruptcy estate. Prior to filing her petition, the Debtor owned certain real property known as 6787 Wendy Jean Drive, Morrow, Georgia (hereinafter the “Property”). Prior to the first meeting of creditors, the Trustee discovered that the Debtor had transferred the Property to her daughter, Defendant Penelope E. DeMarco for no consideration on approximately September 3, 2003. On June 4, 2004, the Trustee filed a complaint objecting to the Debtor's discharge and seeking avoidance of the transfer and recovery of the Property. In response to the Trustee's complaint, on July 6, 2004, the Debtor filed a motion to convert her bankruptcy case from Chapter 13 to Chapter 7. The Trustee objected to the conversion. Following a hearing on August 9, 2004, the Court entered an order allowing the Debtor to convert to Chapter 13 on the condition that the Trustee first be presented with a recorded deed evidencing the transfer of the Property from the Debtor's daughter to the Debtor. Following the reconveyance of the Property to the Debtor, the Debtor's case was officially converted to Chapter 13 on November 22, 2004. On August 3, 2004, the Trustee filed the instant motion for judgment on the pleadings.

It appearing to the Court that the Trustee's complaint to avoid the transfer and recover the Property for the benefit of the estate has been rendered moot by the voluntary transfer of the Property from DeMarco to the Debtor, the Trustee's motion for judgment on the pleadings as to the transfer is **DENIED** and the complaint is **DISMISSED** as moot.

It appearing to the Court that the Trustee no longer has standing to object to the discharge of the Debtor and that the conversion of the Debtor's case to Chapter 13 has

rendered the Trustee's objection not ripe for adjudication at this time, the Court will defer ruling on the Trustee's motion for judgment on the pleadings as to the discharge objection, and the remaining litigation is hereby **STAYED** until further order of this Court.¹

IT IS SO ORDERED.

At Atlanta, Georgia, this _____ day of February, 2005.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

¹ This Court has previously dismissed a former Chapter 7 trustee's objection to discharge on the basis that the conversion of the case to Chapter 13 renders the objection moot. *See In re Hahn*, 167 B.R. 693 (Bankr. N.D. Ga. 1994) (Drake, J.) (also opining that, pursuant to Rule 1019, the trustee would be entitled to a new 90-day period in which to bring a new complaint in the event the debtor re-converted his case to Chapter 7). However, given the fact that the Debtor's case may be re-converted to Chapter 7 if her proposed Chapter 13 plan cannot be confirmed, the Court finds that it is preferable to stay the litigation until it is clear that the Debtor will remain in Chapter 13. *See In re Searles*, 317 B.R. 368 (Bankr. 9th Cir. 2004) (finding that an objection to discharge is not rendered moot by the conversion of the debtor's case to Chapter 13, as the debtor always has a right to re-convert the case to Chapter 7).

